

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

JUNE -8 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2007-0051-PR
	)	DEPARTMENT B
v.	)	
	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
ALEXIS GUILLERMO TELLEZ-	)	Rule 111, Rules of
SUAREZ,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20043982

Honorable Christopher C. Browning, Judge

REVIEW GRANTED; RELIEF DENIED

Law Office of Patrick C. Coppen  
By Patrick C. Coppen

Tucson  
Attorney for Petitioner

B R A M M E R, Judge.

¶1 Pursuant to a plea agreement, petitioner Alexis Tellez-Suarez was convicted of attempted sale of a narcotic drug, a class three felony. The trial court sentenced him to a slightly aggravated prison term of five years. Tellez-Suarez filed a notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S. In the petition that

followed, he claimed trial counsel had been ineffective in failing to request a mitigation hearing and not urging the court to consider “available mitigation.” He also contended the trial court erred by considering his criminal history and failing to consider certain evidence in mitigation. The trial court denied relief without an evidentiary hearing, and this petition for review followed.

¶2 Absent an abuse of discretion, we will not disturb a trial court’s ruling on a petition for post-conviction relief. *State v. Sepulveda*, 201 Ariz. 158, ¶ 3, 32 P.3d 1085, 1086 (App. 2001). Tellez-Suarez has failed to sustain that burden. In a thorough minute entry, the trial court identified the claims Tellez-Suarez had raised and resolved them correctly and in a manner that permits meaningful review by this court. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Although no purpose would be served in “rehashing the trial court’s correct ruling,” *id.*, we note its salient points. The court essentially found that defense counsel’s performance had been neither deficient nor prejudicial, counsel having urged the court to consider a variety of factors in mitigation. The court further found no colorable claim had been raised and confirmed the propriety of a sentence it clearly deemed appropriate when imposed.

¶3 On review, Tellez-Suarez maintains “the trial court failed to properly consider the issues in this case, failed to properly give deference to his allegation of ineffective assistance, and further failed to order an evidentiary hearing.” But the court’s minute entry

believes these contentions. Tellez-Suarez has also failed to establish that the court's ruling was erroneous and he was entitled to an evidentiary hearing.

¶4 Clearly, the court found the outcome of the case would have been no different had counsel requested, and the court conducted, a mitigation hearing. As the court pointed out and the record shows, counsel had urged the court to consider a variety of purported mitigating circumstances, essentially the same factors specified in the petition for post-conviction relief. At the change-of-plea hearing, counsel pointed out he had "filed a duress defense," admitting that because Tellez-Suarez had not been threatened with physical harm, duress was not a defense to the charge but alerting the court that counsel intended "to invoke that circumstance as a mitigating factor at sentencing." At the sentencing hearing, counsel first defended Tellez-Suarez against circumstances the state had urged the court to consider as aggravating: commission of the offense for financial gain and criminal history, which counsel maintained was not as extensive as the prosecutor had suggested. Counsel asked the court to consider as mitigating circumstances that justified a mitigated prison term or, at most, the presumptive term, Tellez-Suarez's health conditions, including the fact that he suffers from hypertension and heart problems, his remorse, and "all of the issues that are implied in his statement of the case involving the co-defendant and the other issues that I raised when I filed the duress defense."

¶5 The evidence in mitigation was before the court at the time of sentencing. Not only will we presume the court considered it, *see State v. Everhart*, 169 Ariz. 404, 407, 819

P.2d 990, 993 (App. 1991), the trial court’s order denying post-conviction relief confirms the court considered it and did so again when given the opportunity to do so in the post-conviction proceeding. Still, the court found the sentence appropriate. On this record, Tellez-Suarez has not shown the court abused its broad sentencing discretion in imposing the sentence or denying post-conviction relief. *See State v. Cazares*, 205 Ariz. 425, ¶ 6, 72 P.3d 355, 357 (App. 2003) (“A trial court has broad discretion to determine the appropriate penalty to impose upon conviction, and we will not disturb a sentence that is within statutory limits . . . unless it clearly appears that the court abused its discretion.”). Under the standards articulated in both *State v. Carriger*, 132 Ariz. 301, 304, 645 P.2d 816, 819 (1982), and *State v. Jackson*, 209 Ariz. 13, ¶ 2, 97 P.3d 113, 114 (App. 2004), which Tellez-Suarez relies on, he did not raise a colorable claim for relief as the court correctly found; therefore, he was not entitled to an evidentiary hearing.

¶6           Although we grant the petition for review, we deny relief.

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J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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PHILIP G. ESPINOSA, Judge